

REMARKS

This amendment is responsive to the Advisory Action mailed August 3, 2009, and seeks only to correct formal matters of the application which is otherwise in condition for allowance. No claim amendments have been proposed and no new matter has been added.

The Advisory Action of July 7, 2009 indicates that claim 50 would be allowable in independent form. Applicant thanks Examiner for this favorable review. Applicants have submitted an amendment on July 13, 2009, rewriting claims in independent form to include the subject matter of allowed claim 50 and any intervening claims. The subsequent Advisory Action, to which this amendment is responsive, addresses only the formal matter of URL references in the specification.

An outstanding Advisory Action, mailed August 3, 2009, objects to purported URL references in the specification. Applicant had previously corrected the URL references in an earlier amendment filed December 29, 2008. Applicant telephoned Examiner Michael Opsasnick on August 18, 2009, to which a voicemail was received alluding to the URL references constituting an improper incorporation by reference. Applicant further telephoned the Examiner and Examiner's supervisor, Richemond Dorvil, on August 20th and September 1, respectively, to which no responses were received.

In an attempt to further the case to allowance, Applicant submits this amendment and incurs the corresponding extension of time fees rather than pursue protracted attempts to correct these formalities via an Examiner's amendment.

A previous response to correct the URL reference was provided by Applicants response mailed December 29, 2008. Applicant amended the URL indications to remove the "www" syntax and provide a space between the website name and domain specifier, thus destroying the live linking capabilities of the URL as a so-called "hot link." According to the MPEP, URL specifications are not permitted in a patent application because they would inject "browser executable code" in the application:

VII. Hyperlinks and Other Forms of Browser-Executable Code in the Specification

Examiners must review patent applications to make certain that hyperlinks and other forms of browser-executable code, especially commercial site URLs, are not included in a patent application. 37 CFR 1.57(d) states that an incorporation by reference by hyperlink or other form of browser executable code is not permitted. Examples of a hyperlink or a browser-executable code are a URL placed between these symbols "< >" and http:// followed by a URL address. When a patent application with embedded hyperlinks and/or other forms of browser-executable code issues as a patent (or is published as a patent application publication) and the patent document is placed on the USPTO web page, when the patent document is retrieved and viewed via a web browser, the URL is interpreted as a valid HTML code and it becomes a live web link. (MPEP, 608.01(a)VII).

Applicant's amendment therefore avoids the resulting browser executable code, nonetheless the Examiner has suggested an improper incorporation by reference as attempting to draw in URL content. However, the MPEP further clarifies that it is the browser executable code aspect that constitutes an improper execution by reference:

The attempt to incorporate subject matter into the patent application by reference to a hyperlink and/or *other forms of browser-executable code* [emphasis added] is considered to be an improper incorporation by reference. (MPEP, 608.01(a)VII, 3rd paragraph).

And even if this were not the case, the URL indication does not constitute an incorporation by reference because it lacks the required language as required by 37 CFR 1.57(b):

"Except as provided in paragraph (a) of this section, an incorporation by reference must be set forth in the specification and must:

(1) Express a clear intent to incorporate by reference by using the root words "incorporat(e)" and "reference" (e.g., "incorporate by reference"); and

(2) Clearly identify the referenced patent, application, or publication."

Nonetheless, in an overabundance of caution, Applicant herein amends the specification to remove the URL references in entirety. Applicant respectfully requests favorable action to this amendment by passing the case to allowance.

In the event the above amendments do not sufficiently eradicate the URL references as perceived by the Examiner, the Examiner is authorized to pursue further deletions of the website descriptions via Examiner's Amendment.

Applicant(s) hereby petition(s) for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-3735.

If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 616-9660, in Westborough, Massachusetts.

Respectfully submitted,

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